

<p style="text-align: center;">1 IN THE CIRCUIT COURT OF THE STATE OF OREGON 2 FOR THE COUNTY OF MALHEUR 3 4 NICHOLAS McGUFFIN,) 5 Plaintiff,) 6 vs.) No. 15CV1030 7 MARK NOOTH, Superintendent,) 8 SRCI,) 9 Defendant.)</p> <p style="text-align: center;">10 11 12 13 14 15 DEPOSITION OF STEPHENIE WINTER SERMENO 16 Taken in behalf of the Plaintiff 17 June 24, 2019 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">3 I N D E X</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 10%;">1</th><th colspan="2"></th><th></th></tr> <tr> <th style="text-align: left;">2</th><th colspan="2"></th><th></th></tr> <tr> <th style="text-align: left;">3</th><th><u>Examinations</u></th><th colspan="2"><u>Page</u></th></tr> <tr> <th style="text-align: left;">4</th><th colspan="2"></th><th></th></tr> <tr> <th style="text-align: left;">5</th><td>EXAMINATION BY MS. PURACAL</td><td colspan="2">6</td></tr> <tr> <th style="text-align: left;">6</th><td>EXAMINATION BY MR. REIM</td><td colspan="2">63</td></tr> <tr> <th style="text-align: left;">7</th><th colspan="2"></th><th></th></tr> <tr> <th style="text-align: left;">8</th><th><u>Exhibits</u></th><th colspan="2"></th></tr> <tr> <th style="text-align: left;">9</th><th><u>No.</u></th><th><u>Description</u></th><th><u>Page</u></th></tr> <tr> <th style="text-align: left;">10</th><td>1</td><td>Sermenno Subpoena</td><td>5</td></tr> <tr> <th style="text-align: left;">11</th><td>2</td><td>Kaplan Subpoena</td><td>5</td></tr> <tr> <th style="text-align: left;">12</th><td>3</td><td>Moore Subpoena</td><td>5</td></tr> <tr> <th style="text-align: left;">13</th><td>4</td><td>6/6/17 Report</td><td>5</td></tr> <tr> <th style="text-align: left;">14</th><td>5</td><td>5/20/19 Supplemental Report</td><td>5</td></tr> <tr> <th style="text-align: left;">15</th><td>6</td><td>8/9/18 Cybergenics Report</td><td>5</td></tr> <tr> <th style="text-align: left;">16</th><td>7</td><td>8/27/00 Report</td><td>5</td></tr> <tr> <th style="text-align: left;">17</th><td>8</td><td>1/21/02 Report</td><td>5</td></tr> <tr> <th style="text-align: left;">18</th><td>9</td><td>STR Analysis for Casework</td><td>5</td></tr> <tr> <th style="text-align: left;">19</th><td>10</td><td>Notes/Sample Extraction Report</td><td>5</td></tr> <tr> <th style="text-align: left;">20</th><td>11</td><td>Genotype Summary of Results</td><td>5</td></tr> <tr> <th style="text-align: left;">21</th><td>12</td><td>Transcript Excerpt</td><td>5</td></tr> <tr> <th style="text-align: left;">22</th><td>13</td><td>5/17/17 Amended Report</td><td>5</td></tr> <tr> <th style="text-align: left;">23</th><td>14</td><td>10/10/17 Analytical Report</td><td>5</td></tr> <tr> <th style="text-align: left;">24</th><td>15</td><td>3/5/18 Analytical Report</td><td>5</td></tr> <tr> <th style="text-align: left;">25</th><td>16</td><td>7/17/00 Supplemental Report</td><td>5</td></tr> </thead> <tbody> <tr> <td style="text-align: center;">2</td><td></td><td></td><td style="text-align: right;">4</td></tr> <tr> <td style="text-align: left;">1</td><td colspan="3">BE IT REMEMBERED THAT, pursuant to Oregon 2 Rules of Civil Procedure, the deposition of STEPHENIE 3 WINTER SERMENO was taken before Lisa J. Pace, Court 4 Reporter and Notary Public for Oregon, on Monday, 5 June 24, 2019, commencing at the hour of 8:58, the 6 proceedings being reported in the offices of OSP 7 Forensics, Clackamas, Oregon. 8 -:- 9 APPEARANCES: 10 APPEARING FOR THE PLAINTIFF(S) 11 Janis C. Puracal Forensic Justice Project 12 333 SW Taylor Street, Suite 403 Tigard OR 97204 13 503-664-3641 jpuracal@forensicjusticeproject.org 14 and Brittney Plesser Oregon Innocence Project PO Box 5248 16 Portland OR 97208 503-944-2270 17 bplesser@oregoninnocence.info</td><td style="text-align: left;">17 Undated Letter</td><td style="text-align: right;">5</td></tr> <tr> <td style="text-align: left;">1</td><td colspan="3"></td><td style="text-align: left;">18 Email String</td><td style="text-align: right;">5</td></tr> <tr> <td style="text-align: left;">2</td><td colspan="3"></td><td style="text-align: left;">19 Timeline of Events</td><td style="text-align: right;">5</td></tr> <tr> <td style="text-align: left;">3</td><td colspan="3"></td><td style="text-align: left;">20 9/8/17 Allele Calls</td><td style="text-align: right;">5</td></tr> <tr> <td style="text-align: left;">4</td><td colspan="3"></td><td style="text-align: left;">21</td><td style="text-align: right;">Information to Produce</td></tr> <tr> <td style="text-align: left;">5</td><td colspan="3"></td><td style="text-align: left;">22</td><td style="text-align: right;">Page Line</td></tr> <tr> <td style="text-align: left;">6</td><td colspan="3"></td><td style="text-align: left;">23</td><td style="text-align: right;">Emails 12 17</td></tr> <tr> <td style="text-align: left;">7</td><td colspan="3"></td><td style="text-align: left;">24</td><td style="text-align: right;">von Beroldingen 15 17</td></tr> <tr> <td style="text-align: left;">8</td><td colspan="3"></td><td style="text-align: left;">25</td><td style="text-align: right;">contact info</td></tr> <tr> <td style="text-align: left;">9</td><td colspan="3"></td><td style="text-align: left;">26</td><td style="text-align: right;">Incident Reports 59 25</td></tr> <tr> <td style="text-align: left;">10</td><td colspan="3"></td><td style="text-align: left;">27</td><td style="text-align: right;">27</td></tr> <tr> <td style="text-align: left;">11</td><td colspan="3"></td><td style="text-align: left;">28</td><td style="text-align: right;">Instruction by Counsel</td></tr> <tr> <td style="text-align: left;">12</td><td colspan="3"></td><td style="text-align: left;">29</td><td style="text-align: right;">Page Line</td></tr> <tr> <td style="text-align: left;">13</td><td colspan="3"></td><td style="text-align: left;">30</td><td style="text-align: right;">14</td></tr> <tr> <td style="text-align: left;">14</td><td colspan="3"></td><td style="text-align: left;">31</td><td style="text-align: right;">15</td></tr> <tr> <td style="text-align: left;">15</td><td colspan="3"></td><td style="text-align: left;">32</td><td style="text-align: right;">16</td></tr> <tr> <td style="text-align: left;">16</td><td colspan="3"></td><td style="text-align: left;">33</td><td style="text-align: right;">17</td></tr> <tr> <td style="text-align: left;">17</td><td colspan="3"></td><td style="text-align: left;">34</td><td style="text-align: right;">18</td></tr> <tr> <td style="text-align: left;">18</td><td colspan="3"></td><td style="text-align: left;">35</td><td style="text-align: right;">19</td></tr> <tr> <td style="text-align: left;">19</td><td colspan="3"></td><td style="text-align: left;">36</td><td style="text-align: right;">20</td></tr> <tr> <td style="text-align: left;">20</td><td colspan="3"></td><td style="text-align: left;">37</td><td style="text-align: right;">21</td></tr> <tr> <td style="text-align: left;">21</td><td colspan="3"></td><td style="text-align: left;">38</td><td style="text-align: right;">22</td></tr> <tr> <td style="text-align: left;">22</td><td colspan="3"></td><td style="text-align: left;">39</td><td style="text-align: right;">23</td></tr> <tr> <td style="text-align: left;">23</td><td colspan="3"></td><td style="text-align: left;">40</td><td style="text-align: right;">24</td></tr> <tr> <td style="text-align: left;">24</td><td colspan="3"></td><td style="text-align: left;">41</td><td style="text-align: right;">25</td></tr> <tr> <td style="text-align: left;">25</td><td colspan="3"></td><td></td><td></td></tr> </tbody> </table>	1				2				3	<u>Examinations</u>	<u>Page</u>		4				5	EXAMINATION BY MS. PURACAL	6		6	EXAMINATION BY MR. REIM	63		7				8	<u>Exhibits</u>			9	<u>No.</u>	<u>Description</u>	<u>Page</u>	10	1	Sermenno Subpoena	5	11	2	Kaplan Subpoena	5	12	3	Moore Subpoena	5	13	4	6/6/17 Report	5	14	5	5/20/19 Supplemental Report	5	15	6	8/9/18 Cybergenics Report	5	16	7	8/27/00 Report	5	17	8	1/21/02 Report	5	18	9	STR Analysis for Casework	5	19	10	Notes/Sample Extraction Report	5	20	11	Genotype Summary of Results	5	21	12	Transcript Excerpt	5	22	13	5/17/17 Amended Report	5	23	14	10/10/17 Analytical Report	5	24	15	3/5/18 Analytical Report	5	25	16	7/17/00 Supplemental Report	5	2			4	1	BE IT REMEMBERED THAT, pursuant to Oregon 2 Rules of Civil Procedure, the deposition of STEPHENIE 3 WINTER SERMENO was taken before Lisa J. Pace, Court 4 Reporter and Notary Public for Oregon, on Monday, 5 June 24, 2019, commencing at the hour of 8:58, the 6 proceedings being reported in the offices of OSP 7 Forensics, Clackamas, Oregon. 8 -:- 9 APPEARANCES: 10 APPEARING FOR THE PLAINTIFF(S) 11 Janis C. Puracal Forensic Justice Project 12 333 SW Taylor Street, Suite 403 Tigard OR 97204 13 503-664-3641 jpuracal@forensicjusticeproject.org 14 and Brittney Plesser Oregon Innocence Project PO Box 5248 16 Portland OR 97208 503-944-2270 17 bplesser@oregoninnocence.info			17 Undated Letter	5	1				18 Email String	5	2				19 Timeline of Events	5	3				20 9/8/17 Allele Calls	5	4				21	Information to Produce	5				22	Page Line	6				23	Emails 12 17	7				24	von Beroldingen 15 17	8				25	contact info	9				26	Incident Reports 59 25	10				27	27	11				28	Instruction by Counsel	12				29	Page Line	13				30	14	14				31	15	15				32	16	16				33	17	17				34	18	18				35	19	19				36	20	20				37	21	21				38	22	22				39	23	23				40	24	24				41	25	25					
1																																																																																																																																																																																																																																																																					
2																																																																																																																																																																																																																																																																					
3	<u>Examinations</u>	<u>Page</u>																																																																																																																																																																																																																																																																			
4																																																																																																																																																																																																																																																																					
5	EXAMINATION BY MS. PURACAL	6																																																																																																																																																																																																																																																																			
6	EXAMINATION BY MR. REIM	63																																																																																																																																																																																																																																																																			
7																																																																																																																																																																																																																																																																					
8	<u>Exhibits</u>																																																																																																																																																																																																																																																																				
9	<u>No.</u>	<u>Description</u>	<u>Page</u>																																																																																																																																																																																																																																																																		
10	1	Sermenno Subpoena	5																																																																																																																																																																																																																																																																		
11	2	Kaplan Subpoena	5																																																																																																																																																																																																																																																																		
12	3	Moore Subpoena	5																																																																																																																																																																																																																																																																		
13	4	6/6/17 Report	5																																																																																																																																																																																																																																																																		
14	5	5/20/19 Supplemental Report	5																																																																																																																																																																																																																																																																		
15	6	8/9/18 Cybergenics Report	5																																																																																																																																																																																																																																																																		
16	7	8/27/00 Report	5																																																																																																																																																																																																																																																																		
17	8	1/21/02 Report	5																																																																																																																																																																																																																																																																		
18	9	STR Analysis for Casework	5																																																																																																																																																																																																																																																																		
19	10	Notes/Sample Extraction Report	5																																																																																																																																																																																																																																																																		
20	11	Genotype Summary of Results	5																																																																																																																																																																																																																																																																		
21	12	Transcript Excerpt	5																																																																																																																																																																																																																																																																		
22	13	5/17/17 Amended Report	5																																																																																																																																																																																																																																																																		
23	14	10/10/17 Analytical Report	5																																																																																																																																																																																																																																																																		
24	15	3/5/18 Analytical Report	5																																																																																																																																																																																																																																																																		
25	16	7/17/00 Supplemental Report	5																																																																																																																																																																																																																																																																		
2			4																																																																																																																																																																																																																																																																		
1	BE IT REMEMBERED THAT, pursuant to Oregon 2 Rules of Civil Procedure, the deposition of STEPHENIE 3 WINTER SERMENO was taken before Lisa J. Pace, Court 4 Reporter and Notary Public for Oregon, on Monday, 5 June 24, 2019, commencing at the hour of 8:58, the 6 proceedings being reported in the offices of OSP 7 Forensics, Clackamas, Oregon. 8 -:- 9 APPEARANCES: 10 APPEARING FOR THE PLAINTIFF(S) 11 Janis C. Puracal Forensic Justice Project 12 333 SW Taylor Street, Suite 403 Tigard OR 97204 13 503-664-3641 jpuracal@forensicjusticeproject.org 14 and Brittney Plesser Oregon Innocence Project PO Box 5248 16 Portland OR 97208 503-944-2270 17 bplesser@oregoninnocence.info			17 Undated Letter	5																																																																																																																																																																																																																																																																
1				18 Email String	5																																																																																																																																																																																																																																																																
2				19 Timeline of Events	5																																																																																																																																																																																																																																																																
3				20 9/8/17 Allele Calls	5																																																																																																																																																																																																																																																																
4				21	Information to Produce																																																																																																																																																																																																																																																																
5				22	Page Line																																																																																																																																																																																																																																																																
6				23	Emails 12 17																																																																																																																																																																																																																																																																
7				24	von Beroldingen 15 17																																																																																																																																																																																																																																																																
8				25	contact info																																																																																																																																																																																																																																																																
9				26	Incident Reports 59 25																																																																																																																																																																																																																																																																
10				27	27																																																																																																																																																																																																																																																																
11				28	Instruction by Counsel																																																																																																																																																																																																																																																																
12				29	Page Line																																																																																																																																																																																																																																																																
13				30	14																																																																																																																																																																																																																																																																
14				31	15																																																																																																																																																																																																																																																																
15				32	16																																																																																																																																																																																																																																																																
16				33	17																																																																																																																																																																																																																																																																
17				34	18																																																																																																																																																																																																																																																																
18				35	19																																																																																																																																																																																																																																																																
19				36	20																																																																																																																																																																																																																																																																
20				37	21																																																																																																																																																																																																																																																																
21				38	22																																																																																																																																																																																																																																																																
22				39	23																																																																																																																																																																																																																																																																
23				40	24																																																																																																																																																																																																																																																																
24				41	25																																																																																																																																																																																																																																																																
25																																																																																																																																																																																																																																																																					
<p>1 of 26 sheets</p>	<p>Page 1 to 4 of 71</p>																																																																																																																																																																																																																																																																				

<p style="text-align: center;">5</p> <p>PROCEEDINGS</p> <p>1 [Sermenio Subpoena, EXB. 1, marked] 2 [Kaplan Subpoena, EXB. 2, marked] 3 [Moore Subpoena, EXB. 3, marked] 4 [6/6/17 Report, EXB. 4, marked] 5 [5/20/19 Supplemental Report, EXB. 5, marked] 6 [8/9/18 Cybergeneics Report, EXB. 6, marked] 7 [8/27/00 Report, EXB. 7, marked] 8 [1/21/02 Report, EXB. 8, marked] 9 [STR Analysis for Casework, EXB. 9, marked] 10 [Notes/Sample Extraction Report, EXB. 10, marked] 11 [Genotype Summary of Results, EXB. 11, marked] 12 [Transcript Excerpt, EXB. 12, marked] 13 [5/17/17 Amended Report, EXB. 13, marked] 14 [10/10/17 Analytical Report, EXB. 14, marked] 15 [3/5/18 Analytical Report, EXB. 15, marked] 16 [7/17/00 Supplemental Report, EXB. 16, marked] 17 [Undated Letter, EXB. 17, marked] 18 [Email String, EXB. 18, marked] 19 [Timeline of Events, EXB. 19, marked] 20 [9/8/17 Allele Calls, EXB. 20, marked]</p> <p>21 22 23 STEPHENIE WINTER SERMENO, 24 having first been sworn or affirmed, was examined and 25 testified under penalties of perjury as follows:</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">7</p> <p>1 supervisor?</p> <p>2 A. Prior to working for Oregon State Police I 3 was employed by Washington State Patrol, I worked for 4 them for ten years, both at the Seattle laboratory 5 and the Vancouver laboratory. Prior to that I worked 6 in the State of California at Oakland Police 7 Department, LA County Coroner, LA County Sheriff and 8 at a private DNA laboratory called Forensic 9 Analytical.</p> <p>10 Q. Have you always been a DNA supervisor?</p> <p>11 A. No.</p> <p>12 Q. What were you when you were at the 13 Washington State lab?</p> <p>14 A. For a period of time I was an analyst and 15 for a period of time I was a supervisor.</p> <p>16 Q. Always in DNA?</p> <p>17 A. Yes.</p> <p>18 Q. If you could look in the binder right in 19 front of you, Exhibit No. 1 is the subpoena that I 20 sent to you to appear for this deposition. Is that 21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you are appearing pursuant to that 24 deposition subpoena, correct?</p> <p>25 A. I am, yes.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>
<p style="text-align: center;">6</p> <p>1 MS. PURACAL: Janice Puracal from the 2 Forensic Justice Project for Petitioner McGuffin, 3 with me is Brittney Plesser from the Oregon Innocence 4 Project and John Comery from the Oregon Innocence 5 Project.</p> <p>6 MR. REIM: Paul Reim for the Department 7 of Justice.</p> <p>8 THE WITNESS: Stephanie Winter Sermenio 9 from the Oregon State Police Forensic Services 10 Laboratory.</p> <p>11 12 EXAMINATION</p> <p>13 BY MS. PURACAL:</p> <p>14 Q. Ms. Winter -- Do you want me to refer to 15 you by Ms. Winter Sermenio or Ms. Winter?</p> <p>16 A. Winter Sermenio, please. Thank you.</p> <p>17 Q. Good morning.</p> <p>18 A. Good morning.</p> <p>19 Q. You are the supervisor of the DNA unit at 20 the Oregon State Police Forensics Division; is that 21 correct?</p> <p>22 A. That is correct.</p> <p>23 Q. How long have you been the supervisor?</p> <p>24 A. Not quite six and a half years.</p> <p>25 Q. And what were you before you were the</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">8</p> <p>1 Q. All right. Have you ever testified at 2 deposition before?</p> <p>3 A. Not in the State of Oregon but in 4 California and Washington.</p> <p>5 Q. How many times have you testified in 6 deposition?</p> <p>7 A. Oh. Sorry. I don't know the answer to 8 that. I know at least once in each state.</p> <p>9 Q. And what was the context of that 10 deposition?</p> <p>11 A. All related to my work as a forensic 12 scientist.</p> <p>13 Q. All related to DNA?</p> <p>14 A. Oh, another good question. I'm sorry, I 15 don't know the answer to that.</p> <p>16 Q. Okay. But it was all related to your work 17 as either an analyst or a supervisor?</p> <p>18 A. Correct.</p> <p>19 Q. Do you remember when those depositions took 20 place?</p> <p>21 A. I don't. I'm sorry.</p> <p>22 Q. Was it more than six years ago?</p> <p>23 A. Yes.</p> <p>24 Q. More than ten years ago?</p> <p>25 A. That I'm not sure of. I'm sorry.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>

<p>1 Q. What's the more to it?</p> <p>2 A. You would look at peak heights, you would</p> <p>3 look at the number of alleles at each location, you</p> <p>4 would look for other artifacts besides stutter.</p> <p>5 Q. And you're trying to determine what's a</p> <p>6 real allele versus what's irrelevant information?</p> <p>7 A. Correct.</p> <p>8 Q. That's the interpretation phase?</p> <p>9 A. Correct.</p> <p>10 Q. From there the analyst would write down the</p> <p>11 real alleles on their allele chart?</p> <p>12 A. Correct.</p> <p>13 Q. And then they're going to compare those</p> <p>14 real alleles to standards to figure out the</p> <p>15 inclusions and the exclusions and the inconclusives?</p> <p>16 A. Yes.</p> <p>17 Q. And from there they're going to then report</p> <p>18 their conclusions in a typewritten report?</p> <p>19 A. Yes.</p> <p>20 Q. Is that the reporting phase?</p> <p>21 A. Yes.</p> <p>22 Q. Have I missed any part of the basic</p> <p>23 process?</p> <p>24 A. I don't think so.</p> <p>25 Q. So you understand in Mr. McGuffin's case</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p>1 A. Correct.</p> <p>2 Q. Okay. Have you ever talked to Mary Krings,</p> <p>3 the analyst who ran that sample in 2000?</p> <p>4 A. I have not.</p> <p>5 Q. Do you have any personal knowledge about</p> <p>6 what happened with the testing in 2000?</p> <p>7 A. I don't.</p> <p>8 Q. What is your understanding of why the</p> <p>9 foreign DNA was not reported in the 2000 or 2002</p> <p>10 reports?</p> <p>11 A. It's my understanding that at the time the</p> <p>12 protocols allowed an analyst discretion to either</p> <p>13 report DNA below the threshold or not report the DNA</p> <p>14 below threshold.</p> <p>15 Q. Can you tell me more about the discretion</p> <p>16 piece of it, where that comes from?</p> <p>17 A. I don't know where it comes from. I spoke</p> <p>18 with Cecilia specifically in regard to it and asked</p> <p>19 if this in fact did happen and this was allowed, and</p> <p>20 she confirmed that. Where that rule or that policy</p> <p>21 came from I don't know.</p> <p>22 Q. So you don't know if it was in a written</p> <p>23 protocol from the lab?</p> <p>24 A. I don't believe it was in the written</p> <p>25 protocol. I reviewed the protocol from that period</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>
<p style="text-align: center;">30</p> <p>1 back before the criminal trial, the victim, Leah</p> <p>2 Freeman's shoes were tested for DNA in 2000, right?</p> <p>3 A. Correct.</p> <p>4 Q. And we know now that there was foreign DNA</p> <p>5 on both of those shoes but that foreign DNA wasn't in</p> <p>6 the report issued in 2000.</p> <p>7 A. I can't -- I honestly can't remember if it</p> <p>8 was in both shoes or just one. I know one had</p> <p>9 alleles below threshold that did not end up in the</p> <p>10 report.</p> <p>11 Q. Okay. If you flip to Exhibit 7 in that</p> <p>12 binder in front of you, that's the August 2000</p> <p>13 report.</p> <p>14 A. Yes.</p> <p>15 Q. And if you flip to Exhibit 8, that's the</p> <p>16 January 2002 report, comparing the samples from 2000</p> <p>17 to one other standard, correct?</p> <p>18 A. Yes.</p> <p>19 Q. So it's your understanding that there was</p> <p>20 foreign DNA on at least one of the samples that was</p> <p>21 not listed in the August 2000 report?</p> <p>22 A. Correct, the DNA was below the laboratory's</p> <p>23 threshold and it was not reported.</p> <p>24 Q. So we don't disagree on that, correct, that</p> <p>25 there was foreign DNA in the sample?</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">32</p> <p>1 of time and did not see that in the protocol.</p> <p>2 Q. Was it in one of those guidance documents?</p> <p>3 A. I don't know that guidance documents</p> <p>4 existed at that point in time. That might be a newer</p> <p>5 thing.</p> <p>6 Q. So was this considered a best practice at</p> <p>7 the time?</p> <p>8 A. I don't know that I could say it was best</p> <p>9 practice. I just could say that it's my</p> <p>10 understanding that it was possible and it was analyst</p> <p>11 discretion.</p> <p>12 Q. But you don't know where that discretion</p> <p>13 comes from?</p> <p>14 A. I don't.</p> <p>15 Q. What does it mean to have discretion to</p> <p>16 decide whether or not to report those alleles below</p> <p>17 threshold?</p> <p>18 A. It was my understanding that the analyst</p> <p>19 could use their training and expertise to determine</p> <p>20 whether or not they would report below threshold</p> <p>21 alleles in their written report.</p> <p>22 Q. But as far as that word discretion goes,</p> <p>23 does that mean that they have a choice to report them</p> <p>24 or not report them?</p> <p>25 A. That's my understanding, yes.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>

<p style="text-align: center;">33</p> <p>1 Q. Are there certain factors that she might, 2 the analyst might consider when deciding whether to 3 report those alleles or not report them?</p> <p>4 A. I don't know.</p> <p>5 Q. Who would know that?</p> <p>6 A. Cecilia would be the best person to ask, as 7 she was the technical leader at the time.</p> <p>8 Q. If the analyst wants to exercise her 9 discretion to report the alleles, does she have to 10 get authorization from someone?</p> <p>11 A. The technical leader would -- Sorry, not 12 the technical leader. The technical reviewer would 13 have to agree.</p> <p>14 Q. If the analyst wanted to choose not to 15 report the alleles below threshold would she also 16 have to get authorization from someone?</p> <p>17 A. The technical reviewer has to agree with 18 the interpretation that was performed within the 19 case, so if they chose to report it or they chose not 20 to report it, the technical reviewer would have to 21 agree with that.</p> <p>22 Q. You said two different words there, you 23 said interpret and you said report. Is there a 24 difference between the interpretation and the 25 reporting?</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">35</p> <p>1 policy?</p> <p>2 A. It would be in the data interpretation area 3 of our policy and/or report writing.</p> <p>4 Q. Would it say specifically, you do not have 5 discretion?</p> <p>6 A. It wouldn't say that. It would be more 7 based on the number of alleles that you're seeing and 8 the number of loci that you're seeing alleles at and 9 the peak heights, so it would be more data driven 10 versus discretion or no discretion.</p> <p>11 Q. Those same instructions that are in the 12 current policy did not exist in the old policy?</p> <p>13 A. No.</p> <p>14 Q. Under the old protocols in 2000, if the 15 analyst chooses not to report peaks under threshold, 16 does she have to document that she made that choice?</p> <p>17 A. I don't believe that it was required to 18 document but you would see that within the case file, 19 you would see the alleles below threshold in the 20 allele table and then you would not see that reported 21 in the report, but I don't think I've ever seen it 22 specifically spelled out in a case file, I chose not 23 to report these.</p> <p>24 Q. So how does someone who doesn't understand 25 an allele chart or an electropherogram, how does that</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>
<p style="text-align: center;">34</p> <p>1 A. In the interpretation I believe that they 2 would -- they would still document that the alleles 3 existed, and I don't believe that there was any 4 discretion in that regard. It was the reporting in 5 which there was discretion.</p> <p>6 So it's my understanding that those alleles 7 would be in the case file, documented, and that would 8 be part of the interpretation, but the discretion 9 came in regard to the reporting.</p> <p>10 Q. And is that piece on the reporting that you 11 don't know that there was a written policy that 12 allowed that discretion?</p> <p>13 A. Correct.</p> <p>14 Q. Do analysts now have discretion to choose 15 whether or not to report alleles below threshold?</p> <p>16 A. No.</p> <p>17 Q. So at some point did there become a written 18 policy that says you do not have discretion to report 19 those?</p> <p>20 A. Yes. When that was, I'm not sure.</p> <p>21 Q. But it's in a written policy somewhere?</p> <p>22 A. Yes.</p> <p>23 Q. Is it in the current written policy?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know where in the current written</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">36</p> <p>1 person know that there was peaks below threshold that 2 are not being reported?</p> <p>3 A. They would see them in the allele table and 4 in the electropherogram.</p> <p>5 Q. And that's the only place that they would 6 see them?</p> <p>7 A. Yes.</p> <p>8 Q. Can you turn to Exhibit 11 in that binder.</p> <p>9 A. Okay.</p> <p>10 Q. And I'm looking specifically at cutting 1.3 11 which is about four rows down.</p> <p>12 A. Okay.</p> <p>13 Q. My understanding is that the analyst in 14 2000 reported the results for cutting 1.3. And if 15 you need to, you can flip back to -- I think that is 16 Exhibit No. 7 that's the final report. On the second 17 page of Exhibit 7 the analyst lists the cutting is 18 just Exhibit 1, but my understanding was she's 19 referring to cutting 1.3. Is that correct?</p> <p>20 A. Yes. It's my understanding that at that 21 point in time they didn't necessarily report every 22 single sample if it was from the same item of 23 evidence.</p> <p>24 And it looks like three different cuttings 25 were taken from that shoe, and they reported the</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>

<p style="text-align: center;">41</p> <p>1 Q. Yes, the electropherograms of cutting 1.3. 2 A. Okay. 3 Q. I don't see that she has noted that 12 as 4 being stutter. 5 A. Correct. 6 Q. Does that indicate that she has not 7 determined that that 12 is stutter? 8 A. Yes. If she had considered it stutter she 9 would have crossed it off and not included it in her 10 allele table. 11 Q. So if we go back to that allele table at 12 Exhibit No. 11 and we look at cutting 1.3, is there 13 any other reason why that allele 12 at the D5 locus 14 being above threshold was not reported? 15 A. More than likely it was because it was only 16 one allele that was above threshold. 17 Q. Is that another written protocol or 18 unwritten practice? 19 A. I don't think it was written, it was 20 probably a practice. 21 Q. To not report if there's only one peak 22 above threshold -- 23 A. Correct. 24 Q. -- in the foreign DNA? 25 A. Correct.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">43</p> <p>1 do not match Mr. McGuffin? 2 A. That is correct. 3 Q. And we agree that they don't match the 4 victim, Ms. Freeman? 5 A. Correct. 6 Q. Can you turn to Exhibit 9 in that binder. 7 This is just a couple of pages from the 2000 8 protocol, and if you turn to the third page of that 9 exhibit -- 10 A. Okay. 11 Q. -- this is page 43 of the 2000 protocols. 12 And I see it says at the top there, "Note: Peaks 13 between 50 and 150 RFU will be considered for 14 purposes of exclusion." 15 A. Yes. 16 Q. What does that mean? 17 A. That means if you have data between 50 and 18 150 and you have a standard to compare to that 19 sample, you will look at that data between 50 and 150 20 to exclude somebody. 21 Q. So here we know that there was data between 22 50 and 150 and we know that Mr. McGuffin was excluded 23 from that data. Why was that not reported pursuant 24 to this policy? If you're looking for the report -- 25 A. Is that 7? <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p> </p>
<p style="text-align: center;">42</p> <p>1 Q. The Y peak at the amelogenin locus -- 2 A. Yes. 3 Q. -- that tells us that there's male DNA in 4 the sample, correct? 5 A. Correct. 6 Q. So for any sample that has a Y peak, we 7 know that there's male in the sample? 8 A. At least some male, yes. 9 Q. If we know that the victim is female, then 10 we know that that is foreign DNA in the sample, 11 correct? 12 A. Correct. 13 Q. So here we've got, going back to cutting 14 1.3, we have Y in the sample. So we know that 15 there's some male in that sample? 16 A. Correct. 17 Q. Is there a reason why an analyst wouldn't 18 report that, knowing that the victim was female and 19 so that was always going to be foreign male DNA in 20 that sample? 21 A. Just going back to the -- they had 22 discretion, so I don't know why the discretion was 23 used on this particular sample. 24 Q. Do we agree that the foreign DNA profile 25 seen in 2000 and listed on Ms. Krings' allele chart</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">44</p> <p>1 Q. Exhibit 7, correct. 2 A. I don't think in the first report, the 3 August 27th, 2000, I don't believe that there was a 4 standard other than Corliss Courtwright and Dennis 5 Freeman. I don't know why that comparison was not 6 made. 7 I'm assuming both of those individuals were 8 male -- Oh, no. One of them -- Excuse me. It looks 9 like those were Leah Freeman's parents, and those 10 samples were used to confirm that the toothbrush was 11 an appropriate standard for the victim, but I'm not 12 sure why in this report the -- that Dennis Freeman 13 wasn't compared to that to exclude. 14 Q. Do you know why Mr. McGuffin wasn't 15 compared and noted to exclude? 16 A. Did we -- I'm not sure that we had his 17 standard at that point. I don't see his standard 18 listed but I might be missing it in my cursory 19 review. 20 Q. If you look on the electropherograms which 21 are in Exhibit 10 -- 22 A. Yes. 23 Q. -- second to the last page, Exhibit No. 13, 24 it's an electropherogram, Exhibit 13? 25 A. Yes.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>

<p style="text-align: center;">69</p> <p>1 laboratory would have had protocols or guidelines in 2 regard to reporting.</p> <p>3 Q. Okay. And the threshold would have been 4 around 150 at that time?</p> <p>5 A. Or lower.</p> <p>6 Q. Or lower?</p> <p>7 A. Or higher. It depends on the laboratory.</p> <p>8 It's -- That's common even now.</p> <p>9 Q. How do laboratories justify that when they 10 have theoretically an accreditation out there, how do 11 they justify having different numbers? This is a 12 hard science.</p> <p>13 A. It's actually an applied science. And it 14 is based on experiments that were done in an 15 individual laboratory, we don't all use the same 16 instruments, we don't use all the same amplification 17 kits. Our processes are not identical, therefore, 18 you have -- you can't have an expectation that the 19 thresholds will be identical.</p> <p>20 Q. All right. And do you recall when the 21 threshold changed in this agency from 150 to below 22 that?</p> <p>23 A. I don't.</p> <p>24 MR. REIM: Very good. I don't have any 25 other questions for you, ma'am. Thank you.</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	<p style="text-align: center;">71</p> <p>1 State of Oregon) 2 County of Clackamas) 3 4 I, Lisa J. Pace, Court Reporter and Notary 5 Public, do hereby certify that STEPHENIE WINTER 6 SERMENO personally appeared before me at the time and 7 place mentioned in the caption herein; that the 8 witness was by me first duly sworn on oath and 9 examined upon oral interrogatories propounded by 10 counsel; that said examination, together with the 11 testimony of said witness, was taken down by me in 12 stenotype and thereafter reduced to typewriting; and 13 that the foregoing transcript, Pages 1 to 70, both 14 inclusive, contains a full, true and accurate record 15 of all such testimony adduced and oral proceedings 16 and of the whole thereof. 17 Witness my hand at Lake Oswego, Oregon, this 18 11th day of July 2019. 19 20 21 22 Lisa J. Pace 23 Court Reporter Notary Public for Oregon My Commission expires 7/17/20 24 25 STUMPTOWN STENO 503.888.1416</p>
<p style="text-align: center;">70</p> <p>1 MS. PURACAL: We're done. 2 Off the record. 3 [Deposition adjourned at 10:34]</p> <p>4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">STUMPTOWN STENO 503.888.1416</p>	